

APR 23 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THEODORE JOHN KACZYNSKI

Petitioner,

CIV. S-99- 816 GEB P

Criminal Actions No

CR-S-96-259 GEB

and

✓ CR-S-98-21 GEB

UNITED STATES

Respondent

COMBINED VERIFIED PRO SE MOTION UNDER
28 U.S.C. § 2255 TO VACATE GUILTY
PLEAS AND SENTENCES AND SET ASIDE
CONVICTIONS; MOTION FOR LEAVE TO
AMEND THIS MOTION FOLLOWING SUFFICIENT
TIME TO INVESTIGATE AND PRESENT
ADDITIONAL FACTS OR CLAIMS ABOUT
WHICH THE INCARCERATED, PRO SE
PETITIONER IS AT PRESENT UNAWARE;
MOTION TO RECUSE THE HONORABLE
GARLAND E. BURRELL, JR.

Theodore John Kaczynski

04475-046

P.O. Box 8500

Florence CO 81226-8500

Pro Se

/

ACKNOWLEDGEMENTS

I would like to thank Professor Michael Mello, of Vermont Law School, and three law students who worked under his direct supervision, Ingrid Bussom, Jason Ferreira, and Rich Hente, without whose generous, pro bono assistance I could not have prepared this petition. I emphasize strongly that Professor Mello and his students are in no way responsible for the defects of this petition. Owing to certain circumstances, I was obliged to prepare this petition in great haste within a period of little more than two weeks. Consequently, I was not able to take full advantage of the ideas and legal information with which Professor Mello and his students had previously provided me, nor was I able to submit this petition to them for their criticisms.

I would also like to acknowledge the fact that Quin Denvir and Judy Clarke generously, efficiently, and promptly provided me with documents that I needed for ^{the preparation of} this petition, and helped me with mechanical details such as the wording of the Verification and the Certificate of Service, even though they knew that this petition would be sharply critical of their performance in my case.

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Section 1. Kaczynski's attorneys used various tactics to delay until January 5, 1998, the moment at which their irreconcilable conflict with him came to a head

(a) Until November 25, 1997, Kaczynski's attorneys systematically deceived him about their intentions with respect to mental-status evidence.----- 5

(b) Kaczynski's attorneys caused a three-week delay, from November 25, to December 18, 1997, in Kaczynski's bringing his conflict with them to the attention of Judge Burrell.----- 32

(c) The December 22 agreement and the period from December 22, 1997 to January 5, 1998.----- 37

Section 2. Kaczynski's attorneys used pressure, deception, intimidation, and violent language to prevent Kaczynski from securing the services of J. Tony Serra, an attorney who would not have used a mental-status defense.-- 56

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Section 3. Kaczynski's conflict with his attorneys comes to a head (January 5 to January 22, 1998).----- 67

Section 4. Judge Burrell erred in refusing to allow Kaczynski to represent himself.

(a) Judge Burrell's decision not to allow Kaczynski to represent himself was based on factual findings that were clearly erroneous. Kaczynski did not ask to represent himself for the purpose of delay-- 79

(b) Judge Burrell erred in ruling that Kaczynski's request to represent himself was untimely.----- 86

(c) Even assuming that Judge Burrell was right in ruling that Kaczynski's request to represent himself was untimely as a matter of law, in view of the circumstances, the judge should have allowed Kaczynski to represent himself.----- 92

Section 5. Judge Burrell erred in ruling that Kaczynski's attorneys had the right to force a mental-status defense on him over his objections.----- 96

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